

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID EUGENE WING,

Defendant.

Case No. CR-21-16-GF-BMM

AMENDED ORDER

Defendant David Wing's (Wing) Motion to Continue (Doc. 18) is now before the Court. Plaintiff has no objection.

Wing requests the current trial setting of June 15, 2021, be continued for 60 days. Wing's brief in support of his motion states that additional investigation of both resolution and pretrial motions needs to be conducted to fully prepare this matter. The Government has produced significant discovery, much of which is material marked "Sensitive," or audio files, necessitating Wing's review of these items with counsel. The work that needs to be undertaken to properly investigate, research pretrial motions, gather materials relevant to possible resolution, and trial preparation cannot be accomplished within the current schedule. Because of

these factors a continuance is warranted.

A district court may grant a continuance and exclude the time period of the continuance from the calculation of the speedy trial date when “the ends of justice served by [the continuance] outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. §3161(h)(7)(A). In determining whether an “ends of justice continuance” is appropriate, a district court must consider, inter alia, whether the failure to grant the continuance will result in a miscarriage of justice; whether the case is so unusual or complex that it is unreasonable to expect adequate preparation within the time limits imposed by the Speedy Trial Act; and whether the case, while not complex or unusual, would nonetheless deny counsel the reasonable time necessary for effective reparation. *Id.* §3161(h)(7)(B). An “ends of justice continuance . . . must be specifically limited in time [and] must be justified on the record with reference to the facts as of the time the delay is ordered.” *United States v. Lloyd*, 125 F.3d 1263, 1268 (9th Cir. 1997). Any additional time is properly excluded under the Speedy Trial Act “only if the district court makes certain findings enumerated in [§ 3161(h)(7)].” *Bloate v. United States*, 130 S. Ct. 1345, 1351 (2010).

Wing is charged with two counts of assault with a dangerous weapon, in

violation of Title 18 U.S.C. §§ 1153(a), 113(a)(3) and two counts of possession of a firearm in furtherance of a crime of violence in violation of Title 18 U.S.C. § 924(c)(1)(A)(iii). The crimes allegedly occurred on or about January 1, 2020, at Lodge Pole, within Blaine County, in the State and District of Montana, and within the exterior boundaries of the Fort Belknap Indian Reservation. If convicted, Wing faces a maximum sentence of life in prison.

A continuance of the trial is appropriate under 18 U.S.C. §§3161(h)(7)(A), (B)(I) and (B)(ii). The ends of justice served by a continuance outweighs the interests of the Defendant and the public in a speedy trial. The failure to grant a continuance would deny Wing and his counsel the reasonable time necessary for effective trial preparation, resulting in a potential miscarriage of justice. Accordingly,

IT IS HEREBY ORDERED that Wing's Unopposed Motion to Continue Trial (Doc. 18) is **GRANTED**. **IT IS ALSO ORDERED** that the final pretrial conference and jury trial set for June 15, 2021, are **VACATED**.

The following schedule shall apply. The final pretrial conference is rescheduled for **Tuesday, August 17, 2021 at 8:30 a.m.** The parties are to report to the chambers of the undersigned. The jury trial is rescheduled for

Tuesday, August 17, 2021 at 9:00 a.m. in the Charles N. Pray Courtroom at the Missouri River Federal Courthouse, Great Falls, Montana. The motions deadline is **July 16, 2021**. The plea agreement/notice of intent to proceed to trial deadline is **August 3, 2021**. Expert reports are due on or before **August 6, 2021**. The Jury Instructions and Trial Briefs are due by **August 10, 2021**. **All time between the date of this order and August 17, 2021, shall be excluded for purposes of speedy trial.**

DATED this 6th day of May, 2021.

A handwritten signature in blue ink, reading "Brian Morris".

Brian Morris, Chief District Judge
United States District Court